

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD A. KIRKHAM,

Petitioner,

v.

REED HOLTGEERTS,

Respondent.

Case No. C05-1551-JCC-MJB

ORDER DISMISSING
PETITION FOR WRIT OF
HABEAS CORPUS

This matter comes before the court on petitioner's petition for writ of habeas corpus. Dkt. 6. The court has considered the relevant documents and the remainder of the file herein.

This motion was assigned by the Chief Judge to the undersigned Judge to assist Magistrate Judge Benton, who is on temporary sick leave.

Petitioner filed this habeas corpus petition on September 19, 2005, raising the following grounds for relief:

1. Prosecutorial Misconduct.
2. Judge Michael J. Trickey has deprived me of my right to have a fair opportunity to retain counsel and denied me due process of law to do it, the end result being the complete denial of counsel for my defense.
3. On 6-17-2005 Judge Middaugh heard both issues outlined herein in grounds 1 and 2. Judge Middaugh did on that day condone and excuse the criminal acts of the prosecutions blatant witness tampering, allowing further proceedings in this cause though the acts of the prosecution have prejudiced my right to a fair trial, and further proceedings are useless and unconstitutional.
4. Several violations of due process.

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2 5. Due to the violations of due process described in grounds two and four of this petition I
3 have been unjustly confined to solitary confinement with "no contact" with my 3 children,
4 friends or family for one hundred and twelve days (112) to date. This has caused physical,
5 mental, emotional pain, impaired my ability to prepare a defense and to this day has be
6 under severe stress and duress, so much that I am considering a plea of guilty just to get out
7 of solitary confinement and be able to call my children and family.

8 This habeas petition was filed before petitioner was sentenced on March 16, 2006, following
9 conviction on February 13, 2006 of two counts of Assault in the Third Degree, one count of Assault in the
10 Second Degree-Domestic Violence, one count of Rape in the Third Degree-Domestic Violence, one count
11 of Malicious Mischief in the Second Degree, and one count of Tampering with a Witness-Domestic
12 Violence. Petitioner filed a direct appeal of his conviction; that appeal is pending in the Washington Court
13 of Appeals. While his criminal proceedings were ongoing, petitioner filed two personal restraint petitions
14 with the Washington courts; these petitions were denied.

15 Respondent contends that this court should dismiss this habeas corpus petition because (1) the
16 habeas claims assert violation of rights which allegedly occurred prior to petitioner's conviction; (2) the
17 claims are unexhausted and would be procedurally barred; and (3) the claims could be pursued in
18 petitioner's pending direct appeal.

19 The court concurs that the claims petitioner raises relate to alleged violations of his constitutional
20 rights that occurred before his judgment and sentence was entered. Accordingly, this court can grant no
21 effective relief on those claims. The claims should be dismissed as moot.


22 Alternatively, petitioner failed to exhaust these claims in state court by presenting them properly in
23 state court proceedings as violation of his constitutional rights. Before claims may be raised in a federal
24 habeas corpus petition, state remedies must be exhausted; or an applicant must show there is either an
25 absence of available state corrective process or that circumstances exist that render such process ineffective
26 to protect the rights of the applicant. 28 U.S.C. § 2254(b)(1). Petitioner's direct appeal is pending, and
27 as respondent notes, he may be able to pursue the claims in conjunction with that appeal. This habeas
28 petition should be dismissed on the basis that the claims are moot, and in the alternative, on the basis that
the claims are unexhausted.

Therefore, it is hereby

ORDERED that the petition for writ of habeas corpus is **DISMISSED**.

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
2 party appearing *pro se* at said party's last known address.

3 DATED this 15th day of December, 2006.
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7 ROBERT J. BRYAN
8 United States District Judge
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